



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1998

Ms. Susan C. Rocha
City Attorney
Denton, McKamie & Navarro, P.C.
1700 Tower Life Building
310 South St. Mary's Street
San Antonio, Texas 78205-3111

OR98-1092

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115379.

You inform us that the City of Boerne (the "city") received two requests for information on January 15, 1998. The city has apparently released to the requestor portions of the information requested. This office received your request for an open records ruling on portions of the requested information on March 12, 1998. Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. *The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.* For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission. (Emphasis added.)

Since this office did not receive the city's request for a decision within the ten-day period, the city failed to seek our decision within the ten-day period mandated by section 552.301(a). Because the city did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.302; see *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. When an exception to disclosure that is designed to protect the interests of a third party is applicable, the presumption of openness may be overcome. See Open Records Decision No. 552 (1990).

In regard to certain telephone numbers, you raise section 552.117 of the Government Code, a provision which we believe is designed to protect third party interests. This exception reads as follows:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;
- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioner under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024; or

Thus, the city must withhold from public disclosure the home telephone numbers of all "peace officers" as defined in article 2.12 of the Code of Criminal Procedure and of all current and former employees and officials who have complied with section 552.024 of the Government Code.


You also raise section 552.108 of the Government Code, the "law enforcement" exception. However, this exception generally protects a governmental body's interests rather than the interests of a third party. See Open Records Decision No. 177 (1977). Therefore, we conclude that the city has waived section 552.108 and may not withhold any portion of the information based on section 552.108.

In a letter to the requestor, the city states that it is withholding certain information from the requestor based on section 552.103 of the Government Code. However, as with section 552.108, the city has waived section 552.103 by its failure to timely raise this exception with our office. Accordingly, the city may not withhold any portion of the information from the requestor based on section 552.103.

Finally, you state that portions of the requested information, items P and R in the first letter, are held and maintained by the municipal court. Records of the judiciary are excluded from the Open Records Act. Gov't Code § 552.003(1)(B). Records of the judiciary may nevertheless be available for public inspection under other statutory or common-law rights of inspection. *See* Attorney General Opinion DM-166 (1992).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 115379

Enclosures: Submitted documents

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(w/o enclosures)